IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-7-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.15258 and 15468 of 2006

S. Subramanian ... Petitioner in W.P.15258/2006

R. Sankaran ... Petitioner in W.P.15468/2006

Vs.

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,
Fort St.George, Madras - 600 009.

2. The District Collector,
Tirunelveli Kattabomman District

... Respondents in both writ petitions

The above writ petition came to be numbered under Article 226 of Constitution of India, by way of transfer of O.A.Nos.831 and 832 of 1995 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records pertaining to the Government letter bearing No.93081/E1/92-6, dated 22.8.1994 of the first respondent and quash the same insofar as it relates to the petitioners and further direct the respondents to regularise the services of the petitioners from the date of their initial appointment in the cadre of Office Assistant with all consequential benefits.

For Petitioners : Mr.V. Suthakar
for M/s.Aiyar & Dolia

For Respondents : Mr.I.Paranthaman,
Addl. Government Pleader

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O R D E R

In both the writ petitions, petitioners seek to quash the Government letter dated 22.8.1994 insofar as it relates to the petitioners and further direct the respondents to regularise the services of the petitioners from the date of their initial appointment in the cadre of Office Assistant with all consequential benefits.

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2. The brief facts necessary for disposal of the writ petitions are that originally the petitioner in W.P.No.15258 of 2006 was appointed as office assistant on 22.7.1957 and posted at Veerakeralampudur and the petitioner in W.P.No.15468 of 2006 was appointed as Peon on 3.11.1954 and subsequently he was appointed in the cadre of Office Assistant on temporary basis. The petitioners submitted various representations for regularisation of their services in the cadre of Office Assistant and the said claim was finally rejected by the impugned order dated 22.8.1994 stating that the petitioner in W.P.No.15258 of 2006 do not possess the required qualification and that the petitioner in W.P.No.15468 of 2006 has attained the age of superannuation and therefore their services cannot be regularised. The said order is challenged by the petitioners on the ground that unless regularisation is ordered, the petitioners will not be in a position to get retirement benefits, which are given to the permanent employees such as pension, gratuity, etc. According to the petitioners, they were in service for more than 30 years and therefore even if the services are not regularised on any ground, they are entitled to get pension under the Tamil Nadu Pension Rules, 1978, considering their services for more than 30 years of service.

3. The respondents have filed counter affidavit in W.P.No.15258 of 2006 stating that the petitioner therein worked as Office Assistant in the Revenue Department at Taluk Office, Ambasamudram, and he was permitted to retire from service on the afternoon of 28.2.1995 on attaining the age of superannuation by the order of the P.A. to the District Collector, Tirunelveli, dated 23.2.1995 and it is further stated in the counter affidavit that as per the petitioner's service register he was appointed as Last Grade Government Servant in the office of the Estate Manager, Veerakeralampudur by the then Sub Collector, Cheranmahadevi, through his proceedings dated 18.8.1957 and he worked as Last Grade Government Servant from 22.8.1957 and was ousted for want of vacancy and re-appointed at several intervals. Petitioner was not having any qualification and his appointment was also without reference to sponsorship of employment exchange and therefore his services were not regularised. The contention of the petitioner that he was serving for more than 30 years is not denied in the counter affidavit. However, it is stated that his appointment was irregular and therefore no relaxation of rule was given and consequently his service was not regularised.

4. The learned counsel for the petitioner submits that even assuming that the petitioners' services are not regularised, in view of their continuous service in a pensionable post for more than 30 years, they are entitled to get sanction of pension as the petitioner in W.P.No.15258 of 2006 retired from service on 28.2.1995 as per the order of the P.A. to District Collector dated 23.2.1995 and the petitioner in W.P.No.15468 of 2006 also retired three years ago and they being retired Government

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Servants, they are bound to get pension as per the pension rules.

5. The learned counsel for the respondents submitted that if the petitioners are eligible to get pension under the Pension Rules, their claim will be considered and there is no difficulty in sanctioning pension even though their services are not regularised.

6. I have considered the rival submissions of the learned counsel for the petitioner as well as the respondents.

7. The point in issue is whether the petitioners are entitled to get sanction of pension after retirement even though their services are not regularised, when they have put in more than 30 years of service in the Revenue Department.

8. The facts are not in dispute. Rule 11 of the Tamil Nadu Pension Rules, 1978, clearly states that a Government Servant retiring on or after the 1st October, 1969, with temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.

9. It is not in dispute that the petitioners' services, even though were not regularised, they were in continuous service in pensionable posts and retired on superannuation. As per Rule 21 of the Tamil Nadu Pension Rules, 1978, if a Government Servant is dismissed or removed from service, then his past service will be forfeited. Thus, under the Tamil Nadu Pension Rules, 1978, it is clear that even if a Government servant was appointed temporarily and was holding the post for more than ten years in a pensionable establishment, pension is bound to be sanctioned, provided he retired after 1.10.1969.

10. The Honourable Supreme Court in the decision reported in (1995) 6 SCC 227 = 1996 (1) LLJ 241 (A.P. Srivastava v. Union of India) considered the eligibility to get pension by a temporary Government Servant, who retired on reaching superannuation. In paragraphs 5 and 6, the Honourable Supreme Court held as follows,

> "5. In view of the rival submissions at the bar, the question for consideration is whether there is any rationale behind the rule disentitling pension to a government servant when an order of compulsory retirement is passed in exercise of power under Rule 56 (j) of the Fundamental Rules? As has been noticed earlier after completion of a particular period of service the employer has a right to compulsorily retire the employee in public interest and similarly the employee has a right to voluntarily retire on giving three months' notice. It has been held by this Court

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time and again that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated government servant. If a temporary government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary government servant is rendering of 20 years of service.

6. In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered, we see no justification for denying such right to a temporary government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules. In our considered opinion a temporary government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules."

11. The sanction of pension to a retired Government Servant is not a charity and it is given as the reward for the past services rendered, as held by the Honourable Supreme Court in the following decisions.

(a) (1983) 1 SCC 305 (D.S. Nakara v. Union of India, (1983) 1 SCC 305, (para 19 and 20).

"19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition."

20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced

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through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar (1971) 2 SCC 330 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to th at effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh,(1976) 2 SCC 1."

In the said Judgment, the Supreme Court followed its earlier decisions reported in (1971) 2 SCC 330 (Deokinandan Prasad v. State of Bihar) and (1976) 2 SCC 1 (State of Punjab v. Iqbal Singh).

(b) 1992 Supp (1) SCC 664 (All India Reserve Bank Retired Officers Assn. v. Union of India) (para 5)

"5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. All the Bank employees who had retired prior to November 1, 1990 were governed by the CPF scheme. However, by the introduction of the pension scheme under the Regulations those employees who retired on or after January 1, 1986 have been given an option to switch over to the pension scheme provided they refund the employer's contribution to the CPF scheme together with interest thereon and further agree to pay interest at six per cent per annum from the date of receipt of the fund amount on superannuation till the repayment thereof. The grievance of the petitioners

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is that all employees who were governed by the CPF scheme on the date of their superannuation constituted a homogeneous class and the pension scheme introduced under the Regulations seeks to divide them between those who retired on or before December 31, 1985 and those who retired on and after January 1, 1986; to the latter the benefit of the pension scheme is extended by option while to the former that benefit is denied altogether. This artificial division between members belonging to the same group, contend the petitioners, is a flagrant violation of Article 14 of the Constitution as held in Nakara case."

(c) State of Punjab v. Justice S.S. Dewan, (1997) 4 SCC 569 = JT 1997 (5) SC 26, (para 8)

"8. Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In D.S. Nakara case the change in the formula of determining average emoluments by reducing 36 months' service to 10 months' service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded a s liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at the Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be to go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be

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tempted to join it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22-2-1990, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in D.S. Nakara case that if pensioners form a class computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type. Therefore, on both the grounds the High Court was in error in applying the ratio of the decision in D.S.Nakara case to this case. As rightly contended on behalf of the State, benefit of the amendment would be available to only those direct recruits who retired after it has come into force."

(d) In the Division Bench decision reported in 2007 (2) LLN 169 (C. Damodarasamy v. Government of India), while speaking for the Bench, I had an occasion to deal with similar issue, wherein the Division Bench followed the above cited decisions and ordered to pay pension to a LIC officer.

12. Following the above cited decisions and having regard to the fact that the petitioners are having more than 30 years of service and they are allowed to retire on attaining the age of superannuation, I am of the view that the petitioners are entitled to get sanction of pension from the date of retirement and a direction is issued to to the respondents to sanction pension. The arrears of pension payable to the petitioners from the date of retirement shall be calculated and paid to the petitioners within three months from the date of receipt of copy of this order.

The writ petitions are allowed with the above directions. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Secretary to Government,
Revenue Department, Fort St.George, Madras - 600 009.

2. The District Collector, Tirunelveli District

+ 2 CC To M/s.Aiyar and Dolia, Advocate SR NO.44175, 44174

+ 2 CC to the Government Pleader SR Nos.44129, 44132

W.P.No.15258 & 15468/2006

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